

Service Date: January 22, 1999

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

IN THE MATTER OF the Application of	)	UTILITY DIVISION
Advanced Communications Group, Inc.	)	
and U S WEST Communications, Inc.	)	DOCKET NO. D98.12.281
Pursuant to Section 252(e) of the	)	
Telecommunications Act of 1996 for	)	ORDER NO. 6136
Approval of their Agreement for Interconnection,	)	
Resale and Unbundled Elements	)	

**FINAL ORDER**

**Introduction and Procedural Background**

1. On February 8, 1996, the Telecommunications Act of 1996 (1996 Act)<sup>1</sup> was signed into law, ushering in a sweeping reform of the telecommunications industry that is intended to bring competition to the local exchange markets. The 1996 Act sets forth methods by which local competition may be encouraged in historically-monopolistic local exchange markets. The 1996 Act requires companies like U S WEST Communications, Inc. (U S WEST) to negotiate agreements with new competitive entrants in their local exchange markets. 47 U.S.C. §§ 251 and 252.

2. U S WEST entered into an interconnection agreement with Advanced Communications Group, Inc. (ACG) for resale of U S WEST services and interconnection with U S WEST's network pursuant to the 1996 Act. The parties' agreement is entitled "Advanced Communications Group, Inc. and U S WEST Communications, Inc. Negotiated/Arbitrated Terms of Agreement for Interconnection, Resale, and Unbundled Elements for the state of Montana"

---

<sup>1</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (to be codified as amended in scattered sections of 47 U.S.C.).

(Agreement). U S WEST filed the parties' agreement with the Montana Public Service Commission (Commission) on December 3, 1998. The Agreement was docketed as D98.12.281 and it provides for ACG to resell U S WEST's local exchange services in Montana, to purchase unbundled elements from U S WEST and to interconnect with U S WEST.

3. The Commission issued a Notice of Application for Approval of Agreement for Interconnection, Resale and Unbundled Elements and Opportunity to Intervene and Comment on December 7, 1998, giving public notice of the requirements that the Commission approval of the filing be nondiscriminatory toward other telecommunications carriers not parties to the agreement and be consistent with the public interest, convenience and necessity. The notice stated that no public hearing was contemplated unless requested by an interested party by December 21, 1998. The notice further stated that interested persons could submit limited comments on whether the agreement met these requirements no later than December 30, 1998.

4. No hearing has been requested and no comments or requests for intervention received in regard to the ACG Agreement. The ACG Agreement adopts the previously approved interconnection agreement between U S WEST and Sprint Communications Company, L.P., which was approved by the Commission in November 1997.

#### **Applicable Law and Commission Decision**

5. The Interconnection Agreement between U S WEST and ACG provides for, *inter alia*, interconnection by means of collocation, entrance facilities or meet point arrangements; the exchange of traffic between U S WEST and ACG; compensation for transport and termination of such traffic; the use of interim and permanent Number Portability; the purchase of U S WEST's retail services for resale; the acquisition of unbundled network elements from

U S WEST; ACG customer access to operator assistance, Directory Assistance and E911 service; access to poles, conduits and rights-of-way; access to operational support systems and myriad other arrangements necessary for ACG's provision of competitive local exchange services.

6. ACG has elected to opt into the Sprint/U S WEST Interconnection Agreement, which the Commission approved in substantial part on November 25, 1997. *See* Application for Approval of Agreement for Interconnection, Resale and Unbundled Elements, Docket No. D98.12.281 (filed Dec. 3, 1998). In In the Matter of the Application of Sprint Communications Company L.P., Pursuant to 47 U.S.C. Section 252(e) of the Telecommunications Act of 1996 for Approval of its Interconnection Agreement with U S WEST Communications, Inc., Docket No. D97.8.160, Order No. 6030 (Nov. 25, 1997), the Commission rejected five contract provisions which related to dispute resolution, nonpayment of undisputed billed amounts, construction, a creditworthiness database, and customer authorization. Sprint and U S WEST subsequently filed an amendment to their agreement to replace the terms rejected in Order No. 6030. Commission Order No. 6030a dated February 24, 1998, approved only one of the amended sections—the section on customer authorization. The other four sections remain stricken from the Sprint/U S WEST Agreement.

7. The Commission must approve or reject the parties' agreement, with written findings as to any deficiencies, no later than March 22, 1999. 47 U.S.C. . 252(e)(1) and (4). Section 252(e)(2)(A) limits the grounds for rejection of an agreement reached by voluntary negotiation:

(2) GROUNDS FOR REJECTION - The State commission may only reject--

(A) an agreement (or any portion thereof) adopted by negotiation under [47 U.S.C. . 252(A)] if it finds that:

(i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or

(ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity.

8. Notwithstanding the limited grounds for rejection in 47 U.S.C. . 252(e)(2)(A), the state commission's authority is preserved in . 252(e)(3) to establish or enforce other requirements of state law in its review of arbitrated or negotiated agreements, including requiring compliance with state telecommunications service quality standards or requirements. Such compliance is subject to . 253 of the 1996 Act, which does not permit states to permit or impose any statutes, regulations, or legal requirements that prohibit or have the effect of prohibiting market entry.

9. Unlike an agreement reached by arbitration, a voluntarily negotiated agreement need not comply with standards set forth in Section 251(b) and (c). Significantly, standards set forth in . 251(c) and which this agreement may have been negotiated "without regard to" include the following:

(c) **ADDITIONAL OBLIGATIONS OF INCUMBENT LOCAL EXCHANGE CARRIERS.** --In addition to the duties contained in subsection (b), each incumbent local exchange carrier has the following duties:

(2) **INTERCONNECTION.**--The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network--

(A) for the transmission and routing of telephone exchange service and exchange access;

(B) at any technically feasible point within the carriers' network;

(C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate or any other party to which the carrier provides interconnection; and

(D) on rates, terms and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252.

47 U.S.C. . 251(c). This section and . 252(a)(1) of the Act permit parties to agree to rates, terms and conditions for interconnection that may not be deemed just, reasonable and nondiscriminatory, and which are not determined according to the pricing standards included in . 252(c) of the Act, as would be required in the case of arbitrated rates set by the Commission.

10. By approving the Agreement, the Commission does not intend to imply that it approves of all the terms and conditions included in the Agreement and makes no findings herein on the appropriateness of many of the terms and conditions. Our interpretation of the 1996 Act is that . . 252(a) and (c) prevent the Commission from addressing such issues in this proceeding.

11. When parties execute an interconnection agreement and one or both parties submit it to the Commission for approval, the Commission must approve or reject it (in whole or in part) according to the standards in . 252 of the 1996 Act--to determine if it discriminates against a carrier not a party to the agreement or is inconsistent with the public interest, convenience and necessity. The Commission can reject portions of the agreement, but it cannot require additional provisions. If the Commission does not act within 90 days to approve or reject the Agreement, the Agreement will go into effect as is on March 22, 1999, and be deemed approved.

12. The Commission recognized in Order No. 6030, Docket No. D97.8.160, that the Sprint Agreement may need to be modified to reflect the outcome of the Eighth Circuit decision.

Sprint and U S WEST agreed in § 2.2 of their Agreement that negotiations will not be "unreasonably delayed, withheld, or conditioned." Because Sprint and U S WEST provided for timely commencement of negotiations, the Commission did not order negotiations be completed in a time certain.

13. As with the Sprint/U S WEST Agreement, the Commission finds that the terms in the parties' Agreement appear to conform to the standards required by the 1996 Act, with the exception of the contract provisions described and rejected below. The Commission has not made a term for term comparison between the two agreements. Such action is time-consuming and unnecessary. Based on the representations in the parties' application for approval (signed only by counsel for U S WEST), the agreement should be the same as the Sprint/U S WEST agreement. The Commission is not approving terms in the ACG agreement that differ from the Sprint agreement; if any such terms are included in this Agreement, the terms from the Sprint agreement control and supercede this Agreement.

14. The Sprint/U S WEST agreement includes the original agreement and subsequent amendments approved at the time ACG agreed to opt into it. The Agreement submitted by the parties in this Docket does not reflect the Commission's decisions in Order Nos. 6030 and 6030a. For the benefit of the parties, we are providing the following discussion relating to sections that should not have been included in this Agreement.

The Commission rejects the following provisions:

15. Dispute Resolution - Section 36.29 beginning on p. 204 in the ACG Agreement sets forth the parties' agreement pertaining to resolution of disputes arising under the Agreement. It provides that such disputes may be brought to the Commission through its informal or formal

complaint processes or may be referred to negotiation and arbitration under the procedures provided in the Agreement. It includes detailed and extensive arbitration provisions. This Commission has previously ruled that it must be notified about issues that the parties will take to an arbitrator who is not the Commission because the resolution arrived at by the arbitrator may not be consistent with the public interest, convenience and necessity. The Agreement also includes the following proposed amendment rejected in Order No. 6030a:

The following language applies to the state of Montana only: (Final Order Approving Interconnection Agreement, 11-26-97, para 26.) Notice will be given the Montana PUC regarding all issues to be arbitrated and/or changes to be made to this agreement affecting Montana subscribers or business for approval to ensure public interest and market entry are fairly considered.

The Commission concluded that this amended contract provision should be rejected because it does not adequately provide for notification to the Commission of issues to be arbitrated or of the subsequent decision reached by the arbitrator. The public interest and the facilitation of market entry are better served by such notification.

16.     Remedy for Non-Payment of Undisputed Billed Amounts - Section 31.8.7 on pages 165-66 of the Agreement sets forth the remedy for non-payment of undisputed billed amounts to U S WEST by ACG. It provides that if ACG fails to make payments of undisputed amounts on dates and times specified, U S WEST may, 30 days after providing written notice to ACG, refuse additional applications for service and/or refuse to complete any pending orders for ACG service at any time thereafter. It further provides that if U S WEST does not discontinue services on the date specified in the notice and noncompliance continues, "nothing contained herein shall preclude U S WEST's the (sic) right to discontinue the provision of the services to ACG without further notice.□ If ACG does not pay U S WEST pursuant to the terms of this

section, ACG's end user customers' services could be in jeopardy of being disconnected through no fault of the end users. Montana has no rules or notification requirements, except what is included in interconnection agreements.

17. In prior agreements, the Commission has required parties to provide for pre-termination notification to the Commission if such action is contemplated. This Agreement contains a provision specifically for Montana which states "(Final Order Approving Interconnection Agreement, 11-26-97, para. 27) U S WEST will comply with Montana state rules and notification requirements that will afford the Commission adequate time to take any appropriate action to protect end users prior to terminating service to ACG." This is the amending language that was rejected by this Commission in Order No. 6030a in Docket D97.8.160.

58. This section contains no provision for notification to the Commission of a pending disconnection of service to an indeterminable number of end users. U S WEST must follow certain Commission rules prior to terminating service to its own end users--as must ACG. If notified of a pending termination of service to ACG's customers, the Commission can act appropriately. It is not consistent with the public interest to permit U S WEST to terminate service to ACG's end users with no notification to the Commission. The Commission rejects . 31.8.7 of the parties' Agreement.

69. Construction - Section 31.5.7 of the Agreement (p. 153) states:

Resold services are available where facilities currently exist or are provided in the future as part of U S WEST's normal course of business operations for its end users and are capable of providing such services without construction of additional facilities or enhancement of existing facilities. However, if ACG requests that facilities be constructed or enhanced to provide resold services, U S



WEST will review such requests on a case-by-case basis and determine, in its sole discretion, if it is economically feasible for U S WEST to build or enhance facilities. If U S WEST decides to build or enhance the requested facilities, U S WEST will develop and provide to ACG a price quote for the construction. If the quote is accepted, ACG will be billed the quoted price and construction will commence after receipt of payment.

The Commission previously concluded that this provision could conflict with the public interest and should be rejected because there may be circumstances which arise where U S WEST, pursuant to its duties as a carrier of last resort, is required by law to construct facilities. The Commission has concluded, however, that the agreed upon terms may apply for instances where U S WEST has no carrier of last resort responsibilities.

20. The parties included the following for Montana: “This provision applies only where U S WEST has no “carrier of last resort” obligations as assigned by the commission which require by law the construction of facilities.” This, too, was considered and rejected in Order No. 6030a.

27. The Creditworthiness Database: (Section 36.38 on p. 221) This section provides that both ACG and U S WEST will make available certain customer payment history information--for each person or entity that applies for local service or intraLATA toll services from either carrier--to a mutually agreed upon third-party credit reporting agency. The information to be reported includes the applicants name, address and previous telephone number, if any; the amount of any unpaid balance in the applicant's name; whether the applicant is delinquent on payments; the length of service with the prior local or intraLATA toll provider; whether the applicant had local or intraLATA toll service terminated or suspended within the last six months (including an explanation of the reason therefor); and whether the applicant was required by the

prior local or intraLATA toll provider to pay a deposit or make an advance payment, or provide another form of security including the amount of each. This section would permit customer credit information to be reported to a credit reporting agency without the customer's authorization and should be rejected. The Commission rejected this and an amending provision in Order No. 6030 and Order No. 6030a, respectively.

22. If the database is used for determining whether a deposit should be required of the applicant, it is not consistent with Commission rules. It includes information that is pertinent to some, but not all of the Commission's deposit rules. In rejecting a provision intended for this purpose in some resale agreements previously reviewed by the Commission, we expressed our concerns for customer privacy and increased opportunity for anticompetitive conduct. Although the rejected language was much different, this provision raises similar concerns for customer privacy.

23. Further, this provision would establish a means for Sprint and U S WEST and any carrier who adopts Sprint's agreement--but no other telecommunications provider--to obtain useful information about potential customers. Such a database, if implemented, should be available to all telecommunications carriers and should be established by a proceeding that includes industry participants, consumer representatives and other interested parties.

24. The Commission again rejects this section because it is not consistent with Commission regulations, it is otherwise not consistent with the public interest, convenience and necessity, and it discriminates against carriers who are not parties to the Agreement.

25. Customer Authorization: Section 31.3.11.1 on pp. 147-49 applies to the unauthorized switching of providers (slamming). In Order No. 6030a, the Commission approved this

section as amended to include a provision specific to Montana which complies with Montana law and Commission rules.

### III. Conclusions of Law

1. The Commission has authority to supervise, regulate and control public utilities. Section 69-3-102, MCA. U S WEST is a public utility offering regulated telecommunications services in the State of Montana. Section 69-3-101, MCA. ACG will also be regulated when it begins offering local exchange service in Montana as a competitive local exchange carrier.
2. Before providing services in Montana, ACG initially will be required to register with the Commission as a telecommunications provider and to provide the requested information to the Commission, if it has not already done so. Section 69-3-805, MCA. In addition, § 69-3-805(1)(e) requires ACG to file initial price lists or tariffs for regulated telecommunications services or to request that filing of such tariffs or price lists be waived by the Commission.
3. The Commission has authority to do all things necessary and convenient in the exercise of the powers granted to it by the Montana Legislature and to regulate the mode and manner of all investigations and hearings of public utilities and other parties before it. Section 69-3-103, MCA.
4. The Commission has jurisdiction to approve the Interconnection Agreement negotiated by the parties and submitted to the Commission for approval according to Section 252(e)(2)(A). Section 69-3-103, MCA.
5. The United States Congress enacted the Telecommunications Act of 1996 to encourage competition in the telecommunications industry. Congress gave responsibility for

much of the implementation of the 1996 Act to the states, to be handled by the state agency with regulatory control over telecommunications carriers. See generally, the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (amending scattered sections of the Communications Act of 1934, 47 U.S.C. . 151, et seq.). The Montana Public Service Commission is the state agency charged with regulating telecommunications carriers in Montana and properly exercises jurisdiction in this Docket pursuant to Title 69, Chapter 3, MCA.

6. Adequate public notice and an opportunity to be heard has been provided to all interested parties in this Docket, as required by the Montana Administrative Procedure Act, Title 2, Chapter 4, MCA.

7. Approval of interconnection agreements by the Commission is subject to the requirements of federal law as set forth in 47 U.S.C. . 252. Section 252(e) limits the Commission's review of a negotiated agreement to the standards set forth therein for rejection of such agreements. Section 252(e)(4) requires the Commission to approve or reject the U S WEST/ACG Agreement by March 22, 1999, or the Agreement will be deemed approved.

#### IV. Order

THEREFORE, based upon the foregoing, it is ORDERED that the interconnection Agreement between U S WEST Communications, Inc. and ACG Communications Corporation is approved as discussed herein, subject to the following conditions:

1. The parties shall not use any creditworthiness database developed for use in other states for Montana customers and are directed to exclude Montana customers from such database.

2. The parties shall file subsequent amendments to their Agreement with the Commission for approval pursuant to the 1996 Act.

3. The parties shall notify the Commission within five days of hiring an arbitrator to resolve disputes under their Agreement. The arbitrator's subsequent resolution of the dispute shall be submitted to the Commission for approval as an amendment to the Agreement.

4. U S WEST shall notify the Commission at least 10 days prior to terminating service to ACG.

DONE AND DATED this 20th day of January, 1999, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

---

DAVE FISHER, Chairman

---

NANCY MCCAFFREE, Vice Chair

---

BOB ANDERSON, Commissioner

---

GARY FELAND, Commissioner

---

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson  
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.